

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

ALEXY ROSA	§	
v.	§	CIVIL ACTION NO. 9:06cv252
LLOYD MORVANT, ET AL.	§	

MEMORANDUM ADOPTING INITIAL REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Alexy Rosa filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

An evidentiary hearing was conducted on June 5, 2007. Following this hearing, the Magistrate Judge issued a Report recommending that Rosa's claims against the Defendants Morvant, Little, and Phillips should be allowed to go forward. The Magistrate Judge also recommended that the claims against the Defendants Robert Ott, Joe Fernald, Rissi Owen, Nathaniel Quarterman, Sgt. Dickerson, and an unknown black officer (possibly Byrone Grant) be dismissed. Rosa filed objections to the Report on June 20, 2007.

In his objections, Rosa argues that Quarterman, the TDCJ Director, and Ott, the senior warden, operated with deliberate indifference towards officers who habitually abused prisoners, and failed to properly discipline or supervise Morvant. He says that Morvant and others "habitually abused prisoners with impunity" and that the supervisory officials discouraged staff members from coming forward with reports of abused prisoners. Rosa offered no objections to the Magistrate Judge's recommendations regarding the other defendants.

Although Rosa says that the supervisory prison officials were deliberately indifferent to the abuse of prisoners, he acknowledges that the Defendants Morvant and Phillips were fired from their employment, and adds that Morvant was criminally prosecuted for his involvement in this incident. He says that Morvant was escorted off of the unit when he arrived for work the day after the incident forming the basis of this lawsuit. These actions are inconsistent with Rosa's theory of liability - if he were correct about TDCJ officials having a pattern and practice of turning a blind eye towards abuse of prisoners, there is no reason to suppose that Morvant would have been fired, much less prosecuted. Rosa simply contends in effect that the prison officials did not take the action which he believed appropriate, at the time that he believed proper. Rosa has not shown a failure to train or supervise which rises to the level of deliberate indifference. *See Collins v. City of Harker Heights, Texas*, 112 S.Ct. 1061, 1069 (1992); *Hinshaw v. Doffer*, 785 F.2d 1260, 1263 (5th Cir. 1986). Rosa's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings and evidence in this cause, the Report of the Magistrate Judge, and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct and that the Plaintiff's contentions are without merit. It is accordingly

ORDERED that the Report of the Magistrate Judge docket no. 35) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's claims against the Defendants Robert Ott, Joe Fernald, Rissi Owen, Nathaniel Quarterman, Sgt. Dickerson, and the unknown black officer are hereby DISMISSED with prejudice as frivolous. It is further

ORDERED that the Defendants Robert Ott, Joe Fernald, Rissi Owen, Nathaniel Quarterman, Sgt. Dickerson, and the unknown black officer are hereby DISMISSED as parties to this lawsuit. The dismissal of these claims and defendants shall have no effect upon the remaining claims and Defendants in this case. Finally, it is

ORDERED that the dismissal of these claims and defendants shall not count as a strike for purposes of 28 U.S.C. §1915(g).

So **ORDERED** and **SIGNED** this **6** day of **August, 2007**.

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

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Ron Clark, United States District Judge